



The Basics for Self-Managed Associations

MULCAHY Community Association Cheat Sheet®

**BRINGING ANSWERS
TO COMMUNITY
ASSOCIATIONS**

This publication discusses significant points of law as they apply to community associations and is not intended to offer specific legal advice or responses to individual circumstances or problems.

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AN OVERVIEW OF THE SELF-MANAGED COMMUNITY ASSOCIATION

A community association is a non profit corporation, a business that is governed by federal law, non-profit corporation law, Arizona State statutes and the governing documents of the association. The volunteer board of directors has fiduciary duties to the association and a responsibility to protect the assets of the association.

It is important to remember that a self-managed or professionally managed 5 home association has to follow the same formalities, corporate behavior and governance as a large master planned association. Some self-managed associations tend to be lax about how they conduct business, getting together informally to talk about what they want to do, which is not proper corporate behavior. Keep your business formal. Meetings, notice and voting as set forth in the governing documents must be followed because failure to do so may affect the legal status of the association and can create a liability, allowing exposure for a lawsuit.

GOVERNING DOCUMENTS & CORPORATE PROTOCOL

CC&Rs create the association and the enforceable scheme of covenants and restrictions that run with the property. They typically grant the association the right to make rules.

Articles of Incorporation establish the association as a legal entity and are filed with the Arizona Corporation Commission.

Bylaws establish the procedures for the internal government and operation of the association. They are the operating guide for the association, not the property.

Rules and Regulations cover specific matters related to the use of the property that are not covered in the CC&Rs. The Rules and Regulations cannot conflict with the CC&Rs and other association documents or they are unenforceable.

Architectural Guidelines are typically established pursuant to the association's rule making authority and should preserve the "vision" of the community.

Arizona Revised Statutes:

Title: 10 Corporations and Associations Chapter: 24 General Provisions;
Non Profit Corporations; A.R.S. Sections 10-3101 - 10-11635

Title: 33 Property: Chapter: 9 Condominiums, A.R.S. Sections 33-1201 - 33-1270
Chapter: 16 Planned Communities; A.R.S. Section 33-1801 - 33-1816

Fiduciary Duties of the Community Association Board Member:

A fiduciary is one who holds something in trust for another. The duty of a fiduciary is to a duty of care and a duty of loyalty.

The Duty of Care:

Directors must make an honest effort to make an informed decision with respect to each issue that comes before the board of directors; understanding the issues and options brought before the board. If necessary, request the advice of competent experts or practitioners and listen to them.

The Duty of Loyalty:

Directors must refrain from taking actions that will benefit them or parties related to them to the detriment of the association.

Business Judgment Rule:

So long as the board acts for the purposes of the corporation, within the scope of its authority and in good faith, courts will not substitute their judgment for the boards'. Follow statutory and association document requirements, use good judgment and keep accurate financial and corporate records.

LAWS AND PROTOCOLS THAT SUPPORT SELF-MANAGED ASSOCIATIONS

Governing Documents: The board of directors has a written copy of the CC&Rs, bylaws, articles of incorporation and rules and regulations.

Operations Manual: The association history, governing documents, need to know information when kept in one place becomes the institutional history for the association.

All Meetings of the Association, Board and Regularly Scheduled Committee Meetings: Should be held to conduct business following the Arizona Open Meeting Law, A.R.S. 33-1804 / Condo A.R.S. 33-1248.

Annual Meeting of the Members: Must be held at least once a year and properly noticed to the membership as provided in the governing documents.

Board Packet with Agenda: Assists board members in keeping the business to be conducted in order and at hand.

Minutes: Minutes of board meetings are taken, approved and made available to the membership. Minutes should include actions taken, not discussion.

LAWS, PROCEDURES AND PROTOCOLS THAT SUPPORT SELF-MANAGED ASSOCIATIONS

Closed Meetings/Executive Meetings: Board meetings may be closed to regular members for the following reasons: 1) Legal advice from an attorney for the board or association; 2) Pending or contemplated litigation; 3) Personal, health or financial matters about an individual association member, or an individual employee of a contractor of the association; 4) Matters relating to employee job performance, compensation, health records or complaints; and 5) discussion of a unit/lot owner's appeal of any violation cited or penalty imposed by the association, unless the owner specifically requests that the issue be discussed in open meeting.

Emergency Meetings: Are called only for true emergencies (i.e. storm damage, water damage, etc.) Note all actions taken and vote to accept those actions at the next board meeting so that they are placed in the minutes.

Insurance: The association must have adequate insurance coverage with qualified carriers.

Compensation: Board members typically serve without compensation.

Fraud Prevention: Methods are in place to guard against embezzlement. 1) Bank reconciliations are reviewed and approved by the board of directors; 2) All reserve account checks require two signatures; 3) Checks are issued only with the board of directors' approval; 4) No checks are made payable to "Cash"; 5) No checks are pre-signed; and 6) Timely monthly financial reports are prepared, reviewed by the board and made available to owners.

Delinquencies: There is a written delinquency collection policy in place and delinquencies are pursued in a timely manner.

Enforcement: A written enforcement policy is in place. Boards have a duty to enforce rules and regulations in a fair, evenhanded and consistent manner.

Formal Violation Appeal Process: A written violation appeal process is in place and adhered to.

Fines and Penalties: After notice and opportunity to be heard, the board of directors may impose reasonable monetary penalties per A.R.S. 33-1803(B) A.S.S. 33-1807/Condo A.R.S. 33-1242.

Fillings: All filings for the association are current. Arizona Corporation Commission, IRS tax filings and reports and contact information with the county recorder (A.R.S. 33-1807(J)/Condo 33-1256(J).

Reserves: The association should consider having a reserve analysis and a reserve account.

Annual Audit: A.R.S. 33-1810/Condo A.R.S. 33-1243 requires an annual audit, compilation or review once a year.

Annual Operating and Reserve Budget: A review is performed and the board formally adopts a new budget each year.

Records: Must be kept and maintained appropriately.

Access to Books and Records: A.R.S. 33-1805/Condo A.R.S. 33-1258. All records of the association shall be made reasonably available to the members of the association with some exceptions.

Procedure for Emergencies: A written procedure for handling emergencies is in place.

Communication: The association sends out regular association information via, newsletters, webpage, etc.

Consult with professionals when necessary: Some of the association technicalities require professional expertise; an attorney, accountant and insurance agent are worthwhile expenditures.

THE 5 TOP QUESTIONS ASKED BY SELF-MANAGED ASSOCIATIONS

- 1. What do you do when you cannot get board members?** Work on volunteer recruitment skills.
- 2. What do you do when you cannot meet quorum requirements for the annual meeting?** Close the meeting and spend time recruiting for a follow-up meeting. Encourage mail in ballots.
- 3. Why do we need to be in good standing with Arizona Corporation Commission?** Check www.azcc.gov to determine if your association is in good standing with ACC. It is important to maintain corporation status because it offers limited liability for directors, officers and owners of the association.
- 4. Do we have to pay taxes?** It depends, if you are a tax exempt association (few qualify) 501(c)(4) or a 501(c)(7) you may not. Most associations file form 1120 with 15% on taxable income up to \$50,000 or form 1120H with a flat tax of 30%. Check with an accountant knowledgeable in community association taxes to determine what is best for your association.
- 5. Any hints for Self-Management?** Promote a sense of community, focus on practical approaches, practice common sense, seek reasonable solutions, keep association business open to members, share the burden with committees, understand your governing documents and seek professional advice when needed.

RECRUIT, RESPECT, RECOGNIZE VOLUNTEERS TIPS!

1. Provide social opportunities in the association where people get to know each other and have fun! People want to help people that they know personally.
2. The best way to get volunteers is to ASK!
3. Advertise for volunteers in as many different venues as possible. Repeated pleas will have an effect.
4. Volunteers want constructive meaningful work, write a job description.
5. Match the volunteer to the job, if someone hates book-keeping do not ask him/her to do the budget.
6. Increase effectiveness by providing adequate preparation, training and tools.
7. Recognition should be meaningful and fair. If you reward volunteers who are not doing well you will de-motivate other volunteers.
8. Recognition does not have to cost money. A smile, and most importantly a "thank you". Certificates of appreciation at the annual meeting, a note of thanks upon completion of a project, a birthday card, etc.
9. It starts at the top, proactive motivators garner results.